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(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Cr.A.No. 2441 of 2000

(10050)

**Appellants:** Accused (In Jail)

1. Laxminarayan Giri, aged 39 years, son of Rampal Giri, occupation-service;
2. Ramlal, aged 80 years, son of Mannu Giri, cultivator; Dead
3. Jundribai, aged 75 years, wife of Ramlal Giri;

All R/o village Narkola, P.S. Pratappur, District Sarguja, M.P.

Shantosh Kumar Singh

versus

**Respondent:** The State of Madhya Pradesh

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE, 1973

(113)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 2441 of 2000

Appellants — Laxmi Narayan Giri and others

Versus

Respondent — The State of Madhya Pradesh (now State of Chhattisgarh).

**DIVISION BENCH** : Hon'ble Mr. Justice **L. C. Bhadoo**, and Hon'ble Mr. Justice **Satish K. Agnihotri**, JJ

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Shri Rajesh Pandey and Shri Arun Kocher, Advocates for the appellants.

Shri U. N. S. Deo, Government Advocate for the State.

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ORAL JUDGMENT

(26th July, 2006)

The following Judgment of the Court is delivered by **L. C. Bhadoo, J.**

1. By this appeal under Section 374(2) of the Code of Criminal Procedure, the appellants namely Laxmi Narayan Giri (husband of the deceased Shanti Giri), Ramlal (father-in-law of the deceased) and Jundri Bai (mother-in-law of the deceased) have questioned the legality and correctness of the judgment of conviction and order of sentence dated 31.8.2000, whereby the Additional Sessions Judge, Soorajpur, District- Surguja after holding the accused/appellant No.1 Laxmi Narayan Giri guilty for commission of the offence under Sections 302 and 498-A and appellants No. 2 Ramlal & No.3 Jundri Bai for commission of the offence under Sections 302 read with 34 and 498-A of the Indian Penal Code, sentenced, each of them, to undergo imprisonment for life and pay a fine of Rs. 5000/-,

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in default of payment of fine amount to further undergo 5 months rigorous imprisonment, and one year's rigorous imprisonment and pay a fine of Rs. 500/-, in default of payment of fine amount to further under go 2½ months rigorous imprisonment, respectively.

2. During the pendency of this appeal it was informed that the accused/appellant No.2 Ramlal has expired and thus vide order dated 21.11.2005 passed by this Court, the appeal against him stood abated, as no legal heirs of Ramlal have filed any application to prosecute the appeal.

3. The case of the prosecution in brief is that near about 8 years before the date of incident Shanti Giri (since deceased) was married to accused/appellant Laxmi Narayan Giri and there was one male child out of the wedlock. On account of non-fulfillment of demand of dowry, in the night of 23.5.1999 at about 10 p.m. the accused Laxmi Narayan Giri poured two liters of kerosine oil on the body of Shanti Giri, whereas the appellant No.3 Jundri Bai caught hold of her and the appellant No.2 Ramlal (since deceased) shouted that she be set on fire, on which the accused/appellant Laxmi Narayan Giri set her on fire with a match stick. Shanti Giri, in order to save herself, poured water on her body which was in a pot (dekchi) lying there. The next day on 24.5.1999, in the morning, Smt. Subhas Devi (P.W.4) elder sister-in-law (Jethani) of the deceased and Deema Giri (P.W.5) nephew of the deceased took Shanti Giri to the Holy Cross hospital, Ambikapur and admitted her in that hospital.

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4. On receiving the information from the hospital the Assistant Sub Inspector of Police Station Ambikapur, Gauri Shankar Pandey (P.W.12) reached the hospital and recorded the dehati nalishi (Ex.P/4) at 17.30 hours and based on that the first information report (Ex.P/14-A) was recorded for commission of the offence under sections 307 and 498-A of the I.P.C. On the same day Nai Tahsildar (P.W.7) namely Jagannath Verma recorded the dying declaration (Ex.P/2) of Shanti Giri. On 29.5.1999 the merg intimation (Ex.P/18) was received from the hospital in the police station on which the offence was converted under section 302 of the I.P.C. After receiving the merg intimation Gauri Shankar Pandey (P.W.12) along with Dharamvir Singh Yadav, City Superintendent of Police reached the hospital and after giving notice to the panchas Ex.P/15 and Ex.P/16, prepared the panchnama of the body under the signature of Dharamvir Singh Yadav. The dead body was sent thereafter for the postmortem to the government hospital Ambikapur under Ex.P/9-A, where Dr. Mukesh Kumar Jain (P.W.10) conducted the postmortem on the body of the deceased Shanti Giri and prepared the postmortem report (Ex.P/9) and opined that the cause of death was due to burn septicemia which was up to 80 to 85%. After completion of the investigation the charge sheet was filed in the court of the Judicial Magistrate First Class, Soorajpur, who in turn committed the case to the Sessions Judge, Ambikapur from where learned Additional Sessions Judge received the case on transfer for trial.

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5. The prosecution in order to establish the charges against the accused/appellants examined as many as 14 witnesses. On the other hand, the statements of the accused/appellants were recorded under Section 313 of the Code of Criminal Procedure in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and they have been falsely implicated.

6. Learned trial Court after hearing, learned Additional Public Prosecutor and learned counsel for the accused, convicted and sentenced the accused/appellant, as mentioned in para – 1 of this judgment.

7. We have heard Shri Rajesh Pandey and Shri Arun Kocher, learned counsels appearing on behalf of the appellants and Shri U. N. S. Deo, learned Additional Public Prosecutor for the respondent/State.

8. As far as the question of homicidal death of Shanti Giri is concerned, it is admitted that she died on account of the extensive burn injuries. The case of the prosecution is that the death was homicidal as the accused appellant No.1 after pouring kerosine on the body of Shanti Giri, set her on fire and the appellant No.3 had caught hold of Shanti Giri at that time. Whereas, the defence of the accused persons is that Shanti Giri committed suicide by setting herself on fire, as she was not happy on account of the fact that the accused/appellant No.1 Laxmi Narayan Giri kept another lady.

9. The conviction is primarily based on the circumstantial evidence i.e. the dying declaration made by Shanti Giri, in the

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first instance, in the form of dehati nalishi (Ex.P/14) before Gauri Shankar Pandey (P.W.12), A.S.I. and thereafter the dying declaration made before the Jaggannath Verma (P.W.7) Naib Tahsildar.

10. In order to establish the motive, the prosecution has examined Ramkali (P.W.1), mother of the deceased, Sanjy Giri (P.W.2), brother of the deceased and Ram Naresh Giri (P.W.3), father of the deceased. They have stated that the accused used to subject the deceased to cruelty and harassment for demand of dowry and also the accused/appellant No.1 has kept some other lady. The other set of the witness examined by the prosecution are Subhash Devi (P.W.4), elder sister-in-law (Jethani) of the deceased and Deema Giri (P.W.5), nephew of the deceased, who were residing adjacent to the house of the deceased.

11. As per the settled law in order to base the conviction on the dying declaration, the dying declaration must inspire full confidence of the Court in its correctness that the deceased was in a fit state of mind to observe and identify the assailants. The Court, however, has always to be on caution to see that the statement of the deceased was not as a result of either tutoring, prompting and projected imagination.

12. Seeking the corroboration in the dying declaration is a rule of prudence and not a rule of law.

13. In the case of **Dandu Lakshmi Reddy Vs. State of Andhra Pradesh** { (1999) 7 SCC 69} the Apex Court observed that on the fact situation of a case a judicial mind would tend to

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wobble between two equally plausible hypotheses – was it suicide, or was it homicide ? If the dying declaration projected by the prosecution gets credence, the alternative hypothesis of suicide can be eliminated justifiably. For that purpose, a scrutiny of the dying declaration with meticulous circumspection is called for. It must be sieved through the judicial cullendar and if it passes through the gauzes it can be made the basis of a conviction, otherwise not. It was further held that in view of the impossibility of conducting the test on the version in the dying declaration with the touchstone of cross-examination, the court has to adopt other tests in order to satisfy its judicial conscience that the dying declaration contained nothing but the truth.

14. The general principle of criminal law is that the prosecution is in an legal obligation to prove its case beyond all reasonable doubt and the accused is to only probablise his defence.

15. If we scrutinize the dying declaration and other material available on record, dehati nalishi (Ex.P/14) was recorded by Gauri Shankar Pandey (P.W.12) on 24.5.1999 at 17.30 hours i.e. about after 19 hours of the incident, in which Shanti Giri stated that her husband Laxmi Narayan Giri, Jundri Bai (mother-in-law) and Ram Lal (father-in-law) used to beat her for fulfilling the demand of dowry i.e. freeze, cooler, T.V. and they used to through her out of the house. At the occasion of festival of Holy when she was thrown outside the house, then she went to her parental house. On 7.5.1999 here brother Sanjay came with her to leave her at matrimonial house.

Yesterday, in the night at about 10.00 p.m. her husband poured 2 liters kerosine oil on her body, her mother in law caught hold of her and the father in law was saying that set her on fire, on which her husband set her on fire with the help of match box. Whereas, in the dying declaration (Ex.P/2), which was recorded after the dehati nalishi by Jagganath Verma (P.W.7), Naib Tahsildar, she simply stated that her husband set her on fire after pouring kerosine, family members were not providing food to her, apart from that her husband had kept second wife and there used to be a family quarrel regularly. At the time of the incident her mother-in-law and husband were at residence, there was no other member and they ran away after setting her on fire. Thereafter she tried to extinguish the fire by pouring water on her body. In this dying declaration she has not stated that there was any demand of dowry by her in-laws or husband and on that account they used to subject her to cruelty or harassment. The parts/roles shown to have been played by the mother-in-law and father-in-law in the dehati nalishi have also not been narrated in this dying declaration.

16. In the light of the above discrepancies between two dying declarations , if we look into the evidence of the Jaggannath Verma (P.W.7), Naib Tahsildar, who recorded the dying declaration, he has categorically stated that the deceased categorically stated that her husband set her at fire, she was replying the questions with the little pause. In the cross-examination he has admitted that at the time of the dying

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declaration relatives of Shanti Giri were present and no doctor was present. He has further stated, when he was recording the statement, Shanti Giri was not able to explain the questions fully, her relative used to explain. It is correct that whatever Shanti Giri was saying he was not able to understand and the same was being explained by the relatives, he was recording the statements after satisfying himself. Sister Reema (P.W.9) and doctor Neelima Tirki (P.W.8) have stated that Shanti Giri was admitted at 11.00 a.m. at that time the pulsation of the nerves was slow and at that time she was not in a condition to reply the questions. In the cross examination para-4 she has stated that she was not in a position to speak. Similarly Gauri Shankar Pandey (P.W.12), who recorded the dehati nalishi, has stated in cross examination that at the time of recording the dehati nalishi the mother of Shanti Griri was present, therefore when the dehati nalishi, as also dying declaration (Ex.P/2) were recorded, the relatives of Shanti Giri were present by her side, and particularly, looking to the discrepancies between dehati nalishi and dying declaration, it cannot be ruled out that she was subjected to tutoring and prompting. Shanti Giri in her dying declaration (Ex.P/2), as has been mentioned earlier, has stated that her husband had kept a lady in his house and regularly there were quarrels and her husband kept the lady in her house. This fact finds support from the evidence of the parents of the deceased, as also from the evidence of Subhash Devi (P.W.4) and Deema Giri (P/W.5), who have categorically stated that when they

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were taking Shanti Giri to her parental house, on the way, they enquired and on which she stated that her husband had kept a lady in his house that is why she set herself on fire.

17. Now coming to the point raised by learned Government Advocate, that these two witnesses are related to the accused therefore no reliance can be placed on their evidence. This argument of learned Govt. Advocate cannot be accepted for the reason that at the first instance, they are prosecution witnesses, more over they have not been declared hostile by the public prosecutor on the ground that they were saying something contrary to the prosecution case or to their earlier statement. Therefore, for the foregoing reasons we are of the considered opinion that the dying declarations do not inspire full confidence of the Court.

18. As far as the motive is concerned, Ram Kali (P.W.1), mother and Ram Naresh (P.W.3) father of the deceased, in their examination in chief have stated that the parents in-laws of the deceased, including the husband, used to subject Shanti Giri to cruelty and harass her for demand of dowry. The marriage was solemnized about 8 years prior to the date of the incident. In their cross-examination it is said that they never reported the matter to any police station regarding cruelty and harassment and they have explained that they did not report the matter out of the fear that if the matter is reported to the police then their daughter may be deserted and then they would not be in a position to marry her again. But, even they had not tried to convene a meeting of relatives or other

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members of the society in order to settle the matter or persuade the in-laws not to subject Shanti Giri to cruelty and harassment. For these counts their evidence to the effect, that Shanti Giri was being subjected to cruelty and demand of dowry is not wholly reliable. Therefore, the prosecution has failed to establish the motive of the appellants i.e. non-fulfillment of demand of dowry to commit the crime. The prosecution has not been able to establish the crime under Sections 302 and 302/34 of the I.P.C. against the accused/appellants beyond reasonable doubt.

19. As far as the offence under section 498-A of the I.P.C. is concerned, for that also the evidences of P.W.1, P.W.2 and P.W.3 are concerned, for the reasons mentioned earlier, they are not wholly reliable and as has been held by the Apex Court in the matter of **Gananath Pattnaik Vs. State of Orissa** {(2002) 2 SCC 619} the evidence of P.W.1, P.W.2 and P.W.3 cannot be pressed into the service for establishing the crime under section 498-A of the I.P.C. as whatever stated by Shanti Giri in respect of the accused/appellant to them, come under the definition of 'hearsay evidence'. As has been held by the Apex Court, because these witnesses have stated on the basis of whatever has been stated to them by the deceased Shanti Giri, which is admissible in respect of her death, as per section 32 (1) of the Indian Evidence Act.

20. In the result, the conviction and sentence imposed upon the accused-appellants for commission of the offence under

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sections 302, 302/34 and 498-A of the I.P.C. cannot be sustained and the same is liable to be set aside.

21. In the result, the appeal succeeds and the conviction and sentences imposed upon the accused/appellants under Sections 302, 302 read with 34 and 498-A of the I.P.C. are set aside and they are acquitted of the above charges and if the fine amount has already been deposited by the appellants, the same be refunded to them.

22. The appellants are on bail. Their bail bonds are discharged.

Sd/-
L.C.BHADOO
Judge

Sd/-
Satish K. Agnihotri
Judge

Thakur